



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001226
First-tier Tribunal No: HU/01126/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AAKRITI PHUYAL
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms. K. Turner, Counsel instructed by S. Gardner & Co
For the Respondent: Mr. S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 10 October 2023

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Prudham (the "Judge"), promulgated on 15 December 2022. The Appellant is a citizen of Nepal who applied for entry clearance to the United Kingdom to join her mother, the Sponsor, a British citizen. The Respondent refused her application on 21 June 2022 on the basis that she did not meet the requirements of paragraph 297 of the immigration rules. The Appellant appealed against this decision on human rights grounds, Article 8.
2. Permission to appeal was granted by Upper Tribunal Judge Sheridan in a decision dated 12 May 2023 as follows:

- “1. The Judge (JFTT Prudham) arguably erred by drawing an adverse inference from the appellant’s date of birth on her birth certificate being 2061-06-11 without considering whether this is a date in the Nepalese calendar that corresponds to 27 September 2004.
2. I do not restrict the grounds that can be pursued but make the observation that the other submissions in the grounds appear weak as (a) there is no need to consider ‘sole responsibility’ if the relationship condition in para. 297 of the IRs (ie being parent and child) is not met; and (b) the weight to give to evidence (subject to irrationality, which has not been argued) is a matter for the Judge”.

The hearing

3. The Sponsor attended the hearing.
4. At the outset of the hearing Mr. Walker stated that the Respondent accepted that the Judge had made a material error of law in his consideration of the birth certificate by failing to consider the use of a different calendar in Nepal. This was material as it went to the issue of whether the birth certificate could be relied on, and whether the Appellant and Sponsor were related as claimed.
5. Given this concession, which I found to be properly made, I set the decision aside.
6. I asked Mr. Walker whether the Respondent now accepted, on the basis of the evidence provided, that the Appellant and Sponsor were related as claimed. He confirmed that the Respondent accepted the relationship between the Appellant and Sponsor.

Error of Law

7. The Appellant asked for her appeal to be determined on the papers. There was no oral hearing, and therefore the only evidence before the Judge was that contained in the documents.
8. The Judge’s findings start at [8]. He first considers the Sponsor’s evidence in her witness statement. At [14] he turns to the documents and states:

“As to the documents from Nepal many of these appeared to be translated copies of an original document that was not provided by the appellant. This affected the weight I attach to such documents. I was provided with a copy of the original birth certificate for the appellant from TU Teaching Hospital in Kathmandu. This is handwritten and is dated 27/09/2004 however the certificate gives the date of birth as 2061-06-11. The certificate also appears to have not been signed correctly. In these circumstances I attach little weight to this document”.

9. The Judge does not set out the other documents which were before him. While he refers to “the documents” from Nepal he gives them no further consideration. He only considers the birth certificate in any detail. He identifies what he considers to be a discrepancy on the face of the document, but does not consider that there an explanation for the discrepancy could be the use of a different calendar in Nepal.
10. In her decision the Respondent did not accept that the Appellant and Sponsor were related as claimed as the birth certificate provided was handwritten. There were other documents evidencing the relationship before the Respondent to which she did not refer. The Appellant had additionally provided a Certificate of Birth Registration and a Relationship Verified Certificate (pages 21 and 22 of the Respondent’s bundle). The information on the Certificate of Birth Registration as to the date and place of birth is the same as that on the handwritten

certificate. The Relationship Verified Certificate confirms the relationship between the Appellant and Sponsor. In addition to the Respondent making no reference to them, the Judge failed to properly consider them.

11. I find that the Judge erred in failing to consider whether there could be a reason for the different dates on the handwritten birth certificate and in failing to give proper consideration to all of the evidence before him which corroborated the information on the birth certificate. I find that this error is material as it goes to the core issue as to whether the Appellant and Sponsor are related as claimed. I set the decision aside.
12. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade, I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”

13. With reference to the exceptions in 7(2)(a) and 7(2)(b), the finding that the Appellant and Sponsor are not related as claimed has been set aside, and the relationship has now been accepted. As a result of finding that they were not related as claimed, the Judge made no other findings on whether the Appellant met the requirements of paragraph 297, or more widely under Article 8. Therefore, given the extent of the fact-finding necessary, I consider it appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

14. The decision of the First-tier Tribunal involves the making of a material error of law. I set the decision aside. No findings are preserved.
15. The appeal is remitted to the First-tier Tribunal for an oral hearing at Taylor House.
16. The relationship between the Appellant and Sponsor is no longer an issue in dispute between the parties as the Respondent has accepted that they are related as claimed.
17. The appeal is not to be listed before Judge Prudham.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
17 October 2023